Supreme Court, U.S.
FILED

981586 MAR 29 1999

OFFICE OF THE CLERK

(1)

In The
Supreme Court of the United States
October Term, 1998

J. MICHAEL HILL,

Petitioner,

v.

THE ATTORNEY GRIEVANCE COMMISSION,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of the United States of America

---

PETITION FOR WRIT OF CERTIORARI

J. Michael Hill (P-29769)*
J. MICHAEL HILL, P.C.
7340 Park Avenue
Allen Park, Michigan 48101
(313)388-5710)

*Counsel of Record

60R

QUESTIONS PRESENTED FOR REVIEW

I.

UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, WAS THE FINDING BY DISCIPLINE PANEL WHICH WAS UPHELD BY THE ATTORNEY DISCIPLINE BOARD, THAT THE DISCLOSURE REGARDING A CONFLICT OF INTEREST SHOULD HAVE AT THE VERY LEAST BEEN IN WRITING, WAS THAT A VIOLATION OF THE FOURTEENTH AMENDMENT DUE PROCESS EQUAL PROTECTION CLAUSE AND THIS COURT'S PROHIBITION AGAINST VAGUENESS AS ENUNCIATED IN Grayned vs. City of Rockford, 408 US 104, 109-110, 33 LED2d222, 92 S.Ct.,2294 (1974). WHEN THE MICHIGAN RULES OF PROFESSIONAL CONDUCT GOVERN CONFLICT OF INTEREST DO NOT REQUIRE THAT A DISCLOSURE BE IN WRITING AND THERE IS NO MICHIGAN COURT CASE, MICHIGAN COURT RULE OR MICHIGAN STATUTE REQUIRE THAT THE DISCLOSURE BE IN WRITING.

II.

WAS THE DECISION BY THE HEARING PANEL WHICH WAS AFFIRMED BY THE ATTORNEY DISCIPLINE BOARD THAT THE MICHIGAN CODE OF PROFESSIONAL CONDUCT REQUIRED ATTORNEY FEES TO BE PLACED IN A TRUST ACCOUNT WHEN THERE IS NOTHING IN THE CODE OF PROFESSIONAL CONDUCT THAT STATES THAT AND THERE IS NO MICHIGAN CASE LAW WHICH REQUIRES IT, NO MICHIGAN COURT RULE OR NO MICHIGAN STATUTE WHICH REQUIRES IT A VIOLATION OF THE FOURTEENTH AMENDMENT DUE PROCESS AND EQUAL PROTECTION CLAUSE A VIOLATION OF THIS COURT'S PROHIBITION AGAINST VAGUENESS AS ENUNCIATED IN Grayned vs. City of Rockford, supra.

III.

WAS THE IMPLIED DECISION BY THE HEARING PANEL, WHICH WAS UPHELD BY THE ATTORNEY DISCIPLINE BOARD THAT AN AGREEMENT FOR NON-REFUNDABLE ATTORNEY FEES HAD TO BE IN WRITING WHEN THERE IS NOTHING IN THE MICHIGAN RULES OF PROFESSIONAL CONDUCT REQUIRING THAT, NO MICHIGAN CASE LAW REQUIRING THAT, NO MICHIGAN STATUTE REQUIRING THAT AND NO MICHIGAN COURT RULE REQUIRING THAT A VIOLATION OF THE FOURTEENTH AMENDMENT'S DUE PROCESS AND EQUAL PROTECTION OF LAW CLAUSE AND A VIOLATION OF THIS COURT'S PROHIBITION AGAINST VAGUENESS AS OUTLINED IN Grayned vs. City of Rockford, supra.

IV.

DOES THE DECISION OF THE HEARING PANEL WHICH WAS UPHELD AND APPARENTLY ENDORSED BY THE ATTORNEY DISCIPLINE BOARD THAT AN ATTORNEY CAN BE DISCIPLINED FOR INTERVIEWING A WITNESS WHEN HE SHOULD HAVE KNOWN THAT THE WITNESS HAD AN ATTORNEY WHICH IS CONTRARY TO THE CODE OF PROFESSIONAL CONDUCT WHICH STATES THAT HE KNEW THAT THE PARTY HAD AN ATTORNEY VIOLATE THE FOURTEENTH AMENDMENTS EQUAL PROTECTION AND DUE PROCESS OF LAW CLAUSE AND THE PROHIBITION AGAINST VAGUENESS AS ENUNCIATED IN Grayned vs. City of Rockford, supra.

V.

DID THE HEARING PANEL VIOLATE THE FOURTEENTH AMENDMENTS EQUAL PROTECTION AND DUE PROCESS OF LAW CLAUSE AND THE PROHIBITION AGAINST VAGUENESS

WHEN IT FOUND THAT CHARGING A NON-REFUNDABLE FEE WAS A VIOLATION OF THE CODE OF PROFESSIONAL CONDUCT WHEN THERE IS NOTHING IN THE CODE OF PROFESSIONAL CONDUCT, MICHIGAN CASE LAW, MICHIGAN STATUTES OR MICHIGAN COURT RULES THAT PROHIBIT NON-REFUNDABLE FEES VIOLATE THE FOURTEENTH AMENDMENTS EQUAL PROTECTION AND DUE PROCESS OF LAW CLAUSE AND THE PROHIBITION AGAINST VAGUENESS AS ENUNCIATED IN Grayned vs. City of Rockford, supra.

VI.

DID THE HEARING PANEL VIOLATE THE FOURTEENTH AMENDMENTS EQUAL PROTECTION AND DUE PROCESS OF LAW CLAUSE WHEN IT FOUND THAT ATTORNEY HILL HAD CHARGED AN EXCESSIVE FEE, NOT BECAUSE THE FEE ITSELF WAS EXCESSIVE, BUT RATHER BECAUSE OF THE FAILURE TO REFUND THE UNUSED PORTION WHEN THEY HAD RULED THAT THERE HAD NOT BEEN SUFFICIENT EVIDENCE PRESENTED TO THEM TO DETERMINE WHAT THE UNUSED PORTION WAS.

VII.

DID THE ATTORNEY DISCIPLINE BOARD IN REVERSING THE HEARING PANEL, IN THAT IT INCREASED THE SUSPENSION FROM TWO (2) MONTHS TO SIX (6) MONTHS WHICH THEN REQUIRED AN APPLICATION TO BE READMITTED AS OPPOSED TO AN AUTOMATIC READMITTANCE VIOLATE THE FOURTEENTH AMENDMENTS EQUAL PROTECTION AND DUE PROCESS OF LAW CLAUSE WHEN IT REQUIRED THE HEARING PANEL TO TAKE INTO CONSIDERATION ATTORNEY HILL'S EFFORTS TO RESOLVE THE FEE DISPUTE WITH THE CRITTENDON'S BY ARBITRATION OR OTHERWISE THUS DEPRIVING ATTORNEY HILL OF THE RIGHT TO A JURY TRIAL AND TO JUDICIAL

REVIEW IN REGARD TO THE FEE DISPUTE FURTHER IGNORING MICHIGAN COURT RULE 8.122 WHICH ALLOWS THE JUDGE IN THE UNDERLYING CASE OR THE CIRCUIT COURT OF THE COUNTY WHICH AN ATTORNEY RESIDES IN OR MAINTAINS AN OFFICE IN TO ENTER AN ORDER FOR THE PAYMENT OF MONEY OR THE PERFORMANCE OF AN ACT BY THE ATTORNEY WHICH LAW AND JUSTICE MAY REQUIRE.

VIII.

DOES THE STATE OF MICHIGAN ATTORNEY DISCIPLINE SYSTEM AS ENUNCIATED IN CHAPTER 9 OF THE MICHIGAN COURT RULES VIOLATE THE MICHIGAN CONSTITUTION 1963 ARTICLE 6, SECTION 28, WHICH REQUIRES THAT ALL ADMINISTRATIVE ACTIONS SHALL BE SUBJECT TO DIRECT REVIEW BY THE COURTS AS PROVIDED BY LAW WHEN THE MICHIGAN COURT RULES DO NOT ALLOW FOR DIRECT REVIEW OF THE COURT AND THAT THE ONLY MICHIGAN COURT THAT EVER POTENTIALLY REVIEWS THE DECISIONS OF THE ATTORNEY DISCIPLINE BOARD IS THE MICHIGAN SUPREME COURT WHICH ONLY DOES THAT ON A PETITION FOR LEAVE TO APPEAL WHEREIN THE DECISION TO GRANT LEAVE TO APPEAL IS DISCRETIONARY THUS VIOLATING THE FOURTEENTH AMENDMENTS EQUAL PROTECTION AND DUE PROCESS OF LAW CLAUSE.

IX.

WHEN THE HEARING PANEL FOUND J. MICHAEL HILL "GUILTY OF MISCONDUCT" IN REGARD TO COUNT III: EXCESSIVE FEES, BECAUSE THE ATTORNEY FEE WAS NON-REFUNDABLE AND THEN TURNED AROUND IN COUNT IV. AND FOUND HIM "GUILTY" OF FAILING TO PLACE THE FEE IN A TRUST ACCOUNT BECAUSE THE FEE WAS NOT NON-REFUNDABLE. DID THE PANEL VIOLATE MR. HILL'S EQUAL PROTECTION AND DUE PROCESS RIGHTS UNDER THE

FOURTEENTH AMENDMENT, WAS THIS A TWISTING OF THE FACTS TO FIT INTO THEIR PERCEPTION OF LAW WHICH WOULD BE AN UNCONSTITUTIONAL VIOLATION OF MR. HILL'S FOURTEENTH AMENDMENT RIGHTS.

X.

WAS THE HEARING PANEL'S DECISION TO CONSIDER MR. HILL'S BELIEF THAT HE HAD DONE NOTHING WRONG IN REGARD TO THE CURRENT SITUATION AND THE FACT THAT HE CONSIDERED A PREVIOUS DISCIPLINARY PANEL TO HAVE ALSO MADE A MISTAKE WHEN HE HAD BEEN REPRIMANDED SEVEN (7) YEARS BEFORE ALONG WITH THE HEARING PANEL'S DECISION TO CONSIDER "POSSIBLY DISHONEST AND SELFISH MOTIVES" A DENIAL OF HIS EQUAL PROTECTION AND DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT PARTICULARLY IN LIGHT OF THE FACT THAT THE MICHIGAN CONSTITUTION REQUIRES THAT THE REVIEW BY THE COURTS AS PROVIDED BY LAW SHALL INCLUDE AS A MINIMUM, THE DETERMINATION OF WHETHER SUCH FINAL DECISIONS, FINDINGS, RULINGS AND ORDERS ARE AUTHORIZED BY LAW; AND, IN CASES IN WHICH A HEARING IS REQUIRED WHETHER THE SAME ARE SUPPORTED BY COMPETENT, MATERIAL AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	vi
TABLE OF AUTHORITIES	vii
OPINIONS BELOW	viii
JURISDICTIONAL GROUNDS	ix
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	x
STATEMENT OF CASE	1
ARGUMENT FOR GRANTING PETITION	6
CONCLUSION	11
APPENDIX	13

TABLE OF AUTHORITIES

CASES	Page
U. S. Constitution, Amendment XIV, Section 1	x
Michigan Constitution, 1963 Art. 6, Section 28	9
Grayned vs. City of Rockford, 408 US 104, 109-110, 33 LED2d 222, 92 S. Ct. 2294 (1971)	5,7, 8, 11
In re: Estes, 390 Mich 585; 212 NW2d 903, 905 (1973)	9
MRPC 1.15 Safekeeping Property	6
MRPC 1.5, Fees	6
MRPC 4.2 Communication with Person Represented By Counsel	8
Woll vs. Attorney General, 409 Mich 500; 297 NW 578, 592 (1980)	5

OPINIONS BELOW

Grievance Administrator vs. Attorney J. Michael Hill, Unpublished Report of Tri-County Hearing Panel No. 3, of January 6, 1998, attached hereto as Appendix A.

Grievance Administrator vs. Attorney J. Michael Hill, Unpublished Decision and Report of Tri-County Hearing Panel No. 3, on Disciplinary Hearing dated April 14, 1998, attached hereto as Appendix B and B-1.

Grievance Administrator vs. Attorney J. Michael Hill, Unpublished Order of Suspension dated April 14, 1998, of the Attorney Discipline Board, Tri-County Hearing Panel No. 3, attached hereto as Appendix C.

Grievance Administrator vs. Attorney J. Michael Hill, Unpublished Decision of the Attorney Discipline Board, and Order Increasing Discipline dated October 29, 1998, attached hereto as Appendix D and D-1.

Grievance Administrator vs. Attorney J. Michael Hill, Unpublished Order of the Michigan Supreme Court , dated November 19, 1998, Granting the Motion for Immediate Consideration, Granting the Motion for a Stay pending Further Order of the Court and Taking the Application for Leave to Appeal under Consideration, attached hereto as Appendix E.

Grievance Administrator vs. Attorney J. Michael Hill, Order of the Michigan Supreme Court denying the Application for Leave to Appeal and Continuing the Stay of November 19, 1998 until twenty one (21) days after the entry of the Order, dated March 9, 1999, attached hereto as Appendix F.

STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED

Petitioner, J. MICHAEL HILL, seeks review of the March 9, 1999 Order of the Michigan Supreme Court which denied leave to appeal the October 29, 1998 decision of the Michigan Attorney Discipline Board. The Michigan Attorney Discipline Board had denied Attorney Hill's Motion for Review of the Tri-County Discipline Hearing Panel No. 3's decision of April 14, 1998 and had granted the Grievance Administrator's Motion for Review wherein the Grievance Administrator had asked that Attorney Hill's discipline be increased and that Arbitration be ordered as a condition of Attorney Hill's license to practice law being reinstated.

The decisions of the Tri-County Hearing Panel and the Michigan Attorney Discipline Board are contrary to the Fourteenth Amendment to the United States Constitution and to the determination of this Honorable Court made in Grayned vs. City of Rockford 408 us 104, 109-110, 33 LED2d 222, 92 s. Ct. 2294 (1971). Thus, jurisdiction for review by this Honorable Court is appropriate under 28 USC 1257 and Supreme Court Rule 10.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

APPLICABLE CONSTITUTIONAL PROVISIONS: U. S. CONSTITUTION, AM. XIV

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Lyndal Crittendon was accused of rape and sexual criminal conduct by his step-daughter, Jamie Meksula, which resulted in the Department of Social Services filing a Petition to have the children taken away from the Crittendons. Lyndal and Peggy Crittendon retained the Law Office of J. Michael Hill, P.C., on the evening of April 5, 1995 and were represented the next day by Mr. Hill's office in Probate Court. Mr. Hill was not present due to the fact that he had to go to Cincinnati for an oral argument in the Sixth Circuit Court of Appeals, but had with the full knowledge and consent of the Crittendons, sent his associate, William Gray, who had also met with the Crittendons the night before. After the hearing in Probate Court on the morning of April 6th, while Mr. Hill was still in Cincinnati, Lyndal Crittendon was arrested and charged with five (5) counts of Capital Offense Criminal Sexual Conduct (in effect, First Degree Rape) and was also charged with two (2) counts of Second Degree Sexual Conduct. Mr Hill was contacted by Peggy Crittendon to represent Lyndal in that case and after a great deal of negotiating between her and also with Lyndal's mother and step-father, J. Michael Hill, P.C. had agreed to represent Lyndal Crittendon in the rape charges. Mr. Hill quoted a Fifty Thousand ($50,000.00) Dollar fee to the Crittendons and was eventually approached by Peggy with the request that he start out on the case for Ten Thousand ($10,000.00) Dollars which would be supplied by Lyndal's parents, who would receive a signature loan from their credit union with an additional Fifteen Thousand ($15,000.00) Dollars to be paid after Lyndal's mother and step-father, Mr. and Mrs. Lau, had managed to obtain refinancing of their home. Peggy's question was, "Would this be enough to get you started", whereupon Mr. Hill said that, "It would".

After a period of representing the Crittendons vigorously for over three (3) months, the Crittendons became dissatisfied with Mr. Hill and terminated him. Lyndal Crittendon demanded a substantial refund of the attorney fees that had been paid back from J. Michael Hill, P.C. (Pg. 126 of 9/23/97 Transcript attached hereto as Appendix G.) and stated that he was not "going to mess with him" that if he did not do what he wanted

him to that he "would go to the Michigan Attorney Grievance Commission". Mr. Crittendon also demanded a time sheet from Mr. Hill (Pg. 126 of the 9/23/97 Transcript attached hereto as Appendix G.). After coming in to pick up his time sheet on Monday July 23, 1995, Mr. Crittendon said that he would contact Mr. Hill after looking over the time sheet. Instead, he filed a request for investigation with the Michigan Attorney Grievance Commission.

Eventually, J. Michael Hill was replaced by Gail Benson in regard to the representation of Lyndal Crittendon and after filing a Motion to Excuse in Probate Court in regard to Peggy Crittendon, J. Michael Hill was replaced by a Mr. Devine. Despite the change in attorneys, the Crittendons continued to follow the same path that they had followed with J. Michael Hill. Peggy continued to live with Lyndal and to profess her firm belief in his innocence. Peggy testified on Lyndal's behalf at the Criminal Trial. Lyndal was eventually found not-guilty in a Bench Trial in Detroit Recorder's Court (at that time the Criminal Court for the City of Detroit) in front of Recorder's Court Judge, Daphne Means Curtis (despite the fact that the alleged crime took place outside of the City of Detroit). The Crittendons subsequently pled no contest to the probate charges and eventually their children were returned to them.

Over a year and three months after being terminated by Lyndal Crittendon and Lyndal filing his request for investigation, the Grievance Commission around November 1, 1996 filed a formal complaint against J. Michael Hill alleging three (3) counts of misconduct, including sub-categories, one of which included a statement that it was misconduct for J. Michael Hill to charge for his associates to do work for the Crittendons. One of the count's alleged that Mr. Hill's attorney fee should have been placed in an escrow account. A Motion for Summary Disposition was brought, where it was pointed out that the Michigan Rules of Professional Conduct do not at any point require that Attorney Fees be placed in a escrow account nor does any Statute, Case Law or Court Rule.

On December 11, 1996 Motion for Summary Disposition was denied in regard to Counts I and III and on December 11, 1996 taken

under advisement in regard to Count II, conflict of interest. The Hearing Panel required that the Grievance Administrator supplement her pleadings in regard to the Conflict of Interest Count. The Associate Grievance Administrator handling the matter, Martha Moore, filed a First Amended Pleading which did not say anything new. Mr. Hill responded by filing a Motion for a More Specific Statement. On March 18, 1997, the Hearing Panel met once again and ruled that the supplemental pleadings satisfied their concerns regarding the Summary Disposition regarding Count II. The new Associate Grievance Administrator assigned to the case, Richard Cunningham, who replaced Martha Moore who had left the Grievance Administrator's Office, agreed to amend his pleadings in response to Mr. Hill's Motion for More Specific Statement although the Hearing Panel later entered an Order stating that the Motion for a More Definite Statement had been denied. Instead of amending in a way which would have made sense, Mr. Cunningham added two new Counts, charging Mr. Hill with charging an excessive fee and with having communicated with a party represented by an attorney, which was the twelve (12) year old elder brother of the child who was claiming to have been raped and was theoretically represented by Court Appointed Counsel in the Probate Case, (Pg. 64 of September 4, 1997 Transcript, attached hereto as Appendix H.).

Numerous hearings were held. One of the witnesses who testified against Mr. Hill was Lyndal Crittendon's new attorney, Gail Benson, who was allowed to testify as an expert witness even though she admitted that she expected Lyndal to pay her whatever money that J. Michael Hill was forced to pay Lyndal, please see pg. 83 of the September 4, 1997 Transcript, (Attached hereto as Appendix I.). Ms. Benson also admitted that she had encouraged the Crittendons to bring matters to the attention of the Attorney Grievance Commission and also volunteered that she served on one of the other Hearing Panels of the Attorney Discipline Board, please see pg. 169 of the May 21, 1997 Transcript, attached hereto as Appendix J.

The Hearing Panel concluded taking testimony on October 30, 1997 and issued an opinion on January 6, 1998 acquitting Mr. Hill on the grounds of fraud saying that he did have the experience and expertise to represent the Crittendons, but "convicting" him on the other four Counts.

On Count III charging an excessive fee, the Panel correctly found that the $25,000.00 fee was not in and of itself excessive, but found that the non-refundability of the fee made the fee excessive and further said the failure to refund the unearned portion of the fee made Mr. Hill guilty. Strangely enough, after finding Mr. Hill "guilty" in Count III, because the fee was non-refundable, the Panel in Count IV, Failure to Place Attorney Fees in an Trust Account, found Mr. Hill "guilty" because the attorney fee was not non-refundable. Following a Sanction Hearing, that was held on March 17, 1998, the Hearing Panel on April 14, 1998, issued a Sanction Report and an Order of Discipline suspending Mr. Hill for two (2) months. In their Sanction Report, they stated that they did not know what amount of money Mr. Hill should refund to the Crittendons since the Grievance Administrator did not present sufficient evidence at the Evidentiary Hearing.

The decision of the panel in finding Mr. Hill guilty of the four (4) counts are based on numerous mistakes made by the panel and serious flaws of their appreciation of the facts and law.

The Grievance Administrator and Mr. Hill both appealed. Mr. Hill asked that the Hearing Panel be reversed, and the Grievance Administrator asked that the suspension be increased to a period of time (at least 180 days) that would require Mr. Hill to apply for reinstatement and that the Board order a means by which the fee dispute would be resolved. The Board denied Mr. Hill's Appeal and granted the Administrator's Appeal increasing Attorney Hill's suspension to 180 days and requiring the Hearing Panel to take into consideration when Mr. Hill applied for reinstatement his efforts to settle the fee dispute through arbitration or otherwise.

Attorney Hill filed an Application for Leave to Appeal with the

Michigan Supreme Court.

On November 19, 1998, the Michigan Supreme Court granted Mr. Hill's Motion for a Stay pending their decision to grant his Application for Leave to Appeal. Granted his Motion for Immediate Consideration and took the issue of whether or not to grant leave to appeal under advisement.

On March 9, 1999, the Supreme Court of Michigan issued an Order denying the Application for Leave to Appeal on the grounds that it was not persuaded that it should Grant the Leave to Appeal and further ruling that the stay would be terminated 21 days after entry of the Order. In effect, Mr. Hill would be suspended on March 31, 1999.

This Court's decision in Grayned vs. City of Rockford, supra was first referred to in Attorney Hill's Motion for Reconsideration in regard to the Motion for Summary Disposition on Page 9 attached hereto as Appendix K. Grayned vs. City of Rockford had been cited with approval by the Michigan Supreme Court in Woll vs. Attorney General, 409 Mich (1980) 297 NW2d 578, 592.

The Hearing Panel in their decision denying Attorney Hill's Motion for Reconsideration did not state why they were ignoring Woll vs. Attorney General,supra, or Grayned vs. City of Rockford,supra. Please see decision attached hereto as Appendix L.

Grayned vs. City of Rockford, supra was mentioned on page 14 of Attorney Hill's Brief in Support of Appeal to the Attorney Discipline Board attached hereto as Appendix M. The Attorney Discipline Board did not say why they were ignoring Grayned vs. City of Rockford, supra when they ruled against Attorney Hill other than to say that they did not feel that the Hearing Panel had made legal or procedural mistakes. Please see decision attached hereto as Appendix D and D-1.

On page 35 of Attorney Hill's Application for Leave to Appeal with the Michigan Supreme Court Grayned vs. City of Rockford, supra,

is mentioned. Please see Appendix Nattached hereto. The Michigan Supreme Court when it denied the application for Leave to Appeal did not make any ruling on the merits nor did it respond to the Grayned issue. It simply said that they were "not persuaded" that the questions presented should be reviewed by this Court. Please see Appendix F attached hereto.

ARGUMENT

Questions II and III.

Although neither the Hearing Panel, Attorney Discipline Board or the Supreme Court of Michigan have ever flatly come out and said that Michigan Rules of Professional Conduct 1.15 requires an attorney to place attorney fees paid to a lawyer into a Trust Account there is no way that the "conviction" of J. Michael Hill for that offense could be found unless the panel believed that Michigan Rules of Professional Conduct 1.15 requires such conduct. No where does MRPC 1.15 require that attorney fees be placed in a Trust Account, please see MRPC 1.15 in the appendix. Any fair reading of MRPC 1.15 would lead any reasonable person to believe that 1.15 does not involve attorney fees. The first line of MRPC 1.15 states, "a lawyer shall hold property of clients or third persons that it is in a lawyer's possession in connection with a representation separate from the lawyer's own money". Indeed any reasonable attorney would believe that 1.15 Safekeeping Property has nothing to do with attorney fees since there is another section of the code Rule 1.5 Fees, which does deal with attorney fees. That rule of course does not require an attorney to put an attorney fee into an escrow account either. The situation becomes even more ludicrous when Mr. Cunningham, on behalf of the Grievance Administrator asserted that it was okay for a lawyer to not keep an attorney fee in a trust account if he had a written contract with the client regarding a non-refundable engagement fee or retainer. Clearly there is nothing in Michigan Rules of Professional Conduct that would somehow require any attorney to place his attorney fees in a trust account, unless he had a written agreement with the client. Not only is there nothing in the Code of Professional Conduct, but there is no Michigan Case Law, no Michigan Statute, or no Michigan

Court Rule mandating such a requirement. Clearly, this violates the United States Supreme Court's Constitution prohibition against vagueness and over-reaching as enunciated in Grayned vs. City of Rockford, 408 US 104, 109-110, 33 LED 2d 222, 92 S.Ct. 2294 (1971).

Question I.

The same argument would apply regarding the Panel's finding in the conflict of interest charge that a waiver by the client must be in writing. The Michigan Rules of Professional Conduct as the Court can clearly see does not require that there be a written waiver of a conflict and the consent to proceed. The testimony of expert David S. Steingold, who testified on behalf of Mr. Hill, established that there was no requirement. Please see pg 19 of October 22, 1997 Transcript attached hereto as Appendix O. Given the fact that Mr. Hill testified that he had discussed the conflict issue with the Crittendons and that the Crittendons admitted this at the Evidentiary Hearing clearly the only reason that the Hearing Panel "convicted" Mr. Hill must be because of their insistence that the waiver of a conflict of interest had to be in writing.

Questions V, VI and IX.

The Panel correctly found that the Twenty Five Thousand ($25,000.00) Dollar fee was not excessive in and of itself. They found however, that the non-refundability of the fee made it excessive. However, in the count regarding the failure to place the attorney fee into an escrow account, they found that the fee was not non-refundable. Please see page 6 of their January 6, 1998 Opinion attached hereto as Exhibit . This sort of a conflict is inherently illegal. The Panel cannot have their cake and eat it to; for the panel to find that a fee was non-refundable on the excessive fee issue when such a finding hurts Mr. Hill, and then turn around and say that it was not non-refundable on the placing of the fees in an escrow account issue is hypocritical to say the least. In effect, the Hearing Panel wanted to have one version of facts for the issue of whether or not the fee was non-refundable, claiming that it was not refundable fee in regard to the failure to place attorney fees in an escrow account charge, which according to the Panel there would not be an offense if the fee was non-refundable, and then determined that the fee was

non-refundable in regard to charging an excessive fee and thus finding Mr. Hill guilty of misconduct in regard to that charge.

Question IV.

A similar problem exists in regard to Count 5, communicating with a party represented by counsel, when the Hearing Panel interprets the Michigan Rule of Professional Conduct 4.2 to read whom "the lawyer knows or should have known" when the actual rule reads "the lawyer knows". Once again to suit their purposes, the Hearing Panel has inserted a phrase that is simply not there. The Attorney Discipline Board moreover in its opinion endorsed the Hearing Panel's decision by stating the phraseology "knew or should have known to be represented in a matter by another lawyer." Clearly, this action by the Hearing Panel and the Attorney Discipline Board is in violation of Grayned vs. City of Rockford, supra, and is denying Mr. Hill his equal protection and due process of law rights under the Fourteenth Amendment.

Question VII.

Another due process problem in regard to the so called excessive fee issue is the fact that no judge, jury, arbitrator or anyone or anything has ever determined that there has been to much charged by Mr. Hill in his representation of the Crittendons. The Crittendons have never sued Mr. Hill, they have never brought a claim in front of the Judge in the underlying case or a Judge in the Circuit Court of Wayne County under MCR 8.122, there has never been arbitration, there has never been a determination.

The Panel itself stated in a Sanction Report that there was not sufficient information provided by the Grievance Administrator at the Hearing to determine what the amount of the refund should be yet the panel believes that Mr. Hill should be found guilty of failing to refund that even though they do not know what amount of money it would be. As pointed out by Mr. Hill repeatedly to the Hearing Panel, to the Attorney Discipline Board and to the Michigan Supreme Court there has never been before in the State of Michigan an attorney convicted of failing to refund a fee before it has been determined that he owed money to the client. Mr.

Cunningham on behalf of the Grievance Administration and his predecessor, Ms. Moore have had ample opportunity to present such a case, if indeed one exists and they have been unable to do so because there are not any. This is a classic example of putting the cart before the horse

Moreover, it is a denial of Mr. Hill's equal protection and due process rights, not only because he is being convicted of something that has never been judicially determined but he is also being forced to refund money when there has been no determination that the money is owed by him to anyone. Clearly this is the type of classic situation that the framers of the Constitution wished to prevent which has been made applicable to all Americans under the Fourteenth Amendment. This is of course why the Attorney Discipline Board has increased Mr. Hill's suspension from two (2) months to six (6) months which is one day beyond the period of time in which Mr. Hill could be automatically reinstated and has directed the hearing panel to take into consideration when deciding whether or not to reinstate Mr. Hill, his efforts to resolve the fee dispute with the Crittendons by Arbitration or otherwise. In effect, Mr. Hill's license to practice law is being held ransom and he is basically being forced to give up his right to a Trial by a Jury or at least a Judicial Determination.

Question VIII.

The Michigan Constitution Article 6 Section 28 provides in relevant part, "all final decisions, findings, rules and orders of any Administrative Officer or Agency existing under the Constitution by Law which are Judicial or Quasi-Judicial in affect, private rights of licenses, shall be subject to direct review by the Courts as provided by Law. This review shall include as a minimum the determination of whether such final decisions, findings, rulings and orders are authorized by Law and in cases in which a hearing is required whether the same are supported by competent material and substantial evidence on the whole record. Please see In re: Estes, 309 Mich 585; 212 NW2d 903, 905 (1973) and Article 6, Section 28 of the Michigan Constitution, attached hereto as Appendix P.

Unlike every other profession regulated in the State of Michigan the legal profession does not have a right to review by a Judge. In

unemployment cases the Litigants can appeal an Unemployment Referee's decision to Board of Review and if they are dissatisfied with that have an automatic right to have the matter reviewed by a State Circuit Court Judge. In the case of a legal professional the first level of hearing is held by a Panel of volunteers who are not paid for their work and consequently generally put as much effort into it as they are paid for. At least the Hearing Panel consists of attorneys. The Attorney Discipline Board is the next level of review and is a Board of nine (9) individuals, three of whom cannot be lawyers and six (6) who must be attorneys. After the Attorney Discipline Board an attorney wishing to Appeal its decisions only recourse is to apply to the Michigan Supreme Court for Leave to Appeal. Under the Michigan Court Rules the Michigan Supreme Court is under no obligation to hear the Appeal no matter how meritorious it may be and a decision to not grant leave to appeal is not a reflection on the merits of the underlying appeal. Consequently an attorney in Michigan is never guaranteed a Judicial Review as required by the Michigan Constitution. Ironically, the one profession whose purpose and existence is to protect the rights of others is not given the protection and rights that everyone else receives in Michigan. Mr. Hill has never had the grievance proceedings against him reviewed by a Judge. Clearly this is a denial of his rights as explicitly enunciated in the Michigan Constitution and guaranteed under the Fourteenth Amendment of the Constitution.

Question X.

Finally, it should be pointed out that the Hearing Panel in their Sanction Report indicated that they felt Mr. Hill's feeling that he had done nothing wrong regarding the current grievance and for that matter that he had done nothing wrong in a prior reprimand situation seven (7) years before, was an aggravating factor, basically, what the Hearing Panel was saying was that Mr. Hill should be punished for believing that he did nothing wrong, in effect, be punished for having exercised his right to an Evidentiary Hearing and to assert his belief that he had done nothing wrong on both occasions. To punish anyone for believing that they have done nothing wrong and for maintaining their innocence is the equivalent

of punishing a person for having exercised his right to a Trial. In effect, it is punishing someone for having exercised their constitutional rights. Such an attitude is so contrary to what any lawyer should believe, so contrary to any ruling that a competent Judge would make that it is clearly a violation of Mr. Hill's Fourteenth Amendment due process and equal protection rights. The Panel also listed as an aggravating factor that Mr. Hill may have acted out of "possibly selfish or dishonest motives. Relying on such a tentative finding is a violation of the Michigan Constitutions requirement that any order by based on competent material and substantial evidence on the whole record.

CONCLUSION

The Crittendons, the Attorney Grievance Commision, and the Attorney Discipline Board have preverted the disciplinary system to accomplish what in effect amounts to a financial judgment against J. Michael Hill, P.C. and are using his license to practice law as a leverage to force him to pay money to the Crittendons. This is of course a denial of his due process equal protection rights, since everyone is entitled to have any financial claims against them reviewed by a Judge. Because the purpose in filing the grievance in the first place was not legitimate, there are no actual causes of misconduct that can be proven. In order to change the law to fit the facts, the Hearing Panel with the endorsement of the Attorney Discipline Board have claimed that the Rules of Professional Conduct say things that they simply do not say, which is once again a violation of Mr. Hill's due process and equal protection rights.

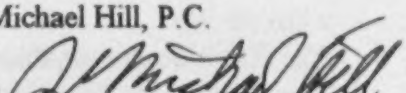
Finally, the Attorney Discipline System in Michigan is in violation of the Michigan Constitution which requires judicial review in administrative matters where a professional license is at stake. There has been no judical review. Thus Michigan has violated its own Constitution in the way that Attorney Discipline is handled with lawyers. The conduct of the Grievance Commission and the Attorney Discipline Board throughout this process has been violative of Mr. Hill's due process and equal protection rights as guaranteed in the Fourteenth Amendment and enunciated in Grayned vs. City of Rockford, supra.

Indeed the violations of the Fourteenth Amendment by the Michigan Attorney Discipline Board are so blatant that if it were not for the tragically serious consequences for J. Michael Hill, Mr. Hill's family, his staff and their families, and his clients, the whole situation would actually be comical.

WHEREUPON, your Petitioner prays that this Honorable Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

J. Michael Hill, P.C.

By: 

J. Michael Hill P-29769*
7340 Park Avenue
Allen Park, MI 48101
313-388-5710

*Counsel of Record

APPENDIX

		Page
A	Report of Tri-County Hearing Panel	1a
B	Decision of Hearing Panel	8a
B-1	Report of Tri-County Hearing Panel	10a
C	Order of Suspension	13a
D	Decision of Attorney Discipline Board	16a
D-1	Order Increasing Discipline	18a
E	Michigan Supreme Court Order 11/19/98	22a
F	Michigan Supreme Court Order 3//9/99	23a
G	Pg. 126 of 9/23/97 Transcript	24a
H	Pg. 64 of 9/4/97 Transcript	25a
I	Pg. 83 of 9/4/97 Transcript	26a
J	Pg. 169 of 5/21/97 Transcript	27a
K	Pg. 9 of Mr. Hill's Motion for Reconsideration	28a
L	Order Regarding Respondent's Motions	29a
M	Pg. 14 of Mr.Hill's Brief in Support of Appeal	31a
N	Pg. 35 of Mr.Hill's Brief in Support of Appeal	33a
O	Pg. 19 of 10/22/97 Transcript	34a
P	Michigan Constitution	35a
Q	Michigan Rules of Professional Conduct	36a

APPENDIX A

STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,
State of Michigan,
Petitioner,

v. Case No. 96-236-GA

J. MICHAEL HILL (P-29769),
Respondent.
_____/

REPORT OF TRI-COUNTY HEARING PANEL NO.3

John B. Lizza, Chairman
Danielle F. Susser, Member
Kenneth F. Silver, Member

APPEARANCES:

Richard L. Cunningham, Grievance Administrator Counsel
Guy Vining, Counsel for Respondent

PANEL PROCEEDINGS

The Grievance Administrator has filed a five count Second Amended Complaint summarized as follows:

COUNT I Conflict of Interest: alleges violations of MCR 9.104(1)-(4); and violations of Michigan Rules of Professional Conduct 1.7(a)(b) and 8.4(a)-(c);

COUNT II Fraud: alleges violations of MCR 9.104(1)-(4); and violations of Michigan Rules of Professional Conduct 1.4(b); 4.1; and 8.4(a)-(c);

COUNT III Charging an Excessive Fee: alleges violations of MCR 9.104(1)-(4); and violations of Michigan Rules of Professional Conduct 1.5(a)(b); 8.4 (a)-(c);

COUNT IV Failing to Deposit Client Monies in a Client Trust Account: alleges violations of MCR 9.104(1)-(4); and violations of Michigan Rules of Professional Conduct 1.4(a)(b); 1.15(a)-(c); 1.16(d); and 8.4(a)-(c);

COUNT V Engaging in an Improper Interview of a Party Represented by Counsel: alleges violations of MCR 9.104 (1)-(4); and violations of Michigan Rules of Professional Conduct 4.2; 4.4; and 8.4 (a)-(c).

A public hearing was conducted in the above entitled matte and testimony was taken on the following dates: May 21, 1997, September 4, 1997, September 23, 1997, October 22, 1997 and October 28,1997. A deposition was also taken via telephone on October 25, 1997, which is also part of the record.

REPORT AND DECISION

COUNT I - CONFLICT OF INTEREST

Lyndal Crittendon was accused of sexual misconduct by his stepdaughter, Jamie Maksula. As a result, Mr. Crittendon was charged with criminal sexual conduct and Mr. and Mrs. Crittendon became the subjects of a separate, but related matter in Wayne County Probate Court concerning the termination of their parental rights. Mr.and Mrs.Crittendon engaged Respondent to represent them.

The Grievance Administrator has charged that Respondent engaged in a Conflict of Interest by representing Mr. Crittendon in the criminal sexual conduct case, while simultaneously representing both Mr. and Mrs.Crittendon in the probate case relating to the termination of their parental rights. The Grievance Administrator further asserts that Respondent's representation of Mr. Crittendon in the parental rights termination case was directly adverse to that of Mrs. Crittendon. Since Respondent had failed to seek or obtain the consent of Mr. and Mrs. Crittendon concerning the potential conflict of interest, same constitutes misconduct in violating of MRPC 1.7(a)(b) and 8.4(a)-(c).

The Respondent has argued that Mrs. Crittendon was informed of her rights, but that because she unequivocally believed in her husband's innocense, that separate counsel would have been unnecessary and unproductive. Respondent has asserted that his clients understood that having separate counsel would have a negative impact upon Respondent's representation of Lyndal Crittendon in the criminal matter.

Both parties presented numerous witnesses and substantial testimony concerning the conflict of interest issue. The Grievance Administrator produced attorney, Gail Benson, accepted by the panel as an expert in criminal sexual conduct matters pertaining to minors. Ms. Benson testified that separate representation of Peggy Crittendon was essential because she was in danger of having her parental rights adversely affected by virture of her support of her husband. Respondent produced attorney David Steingold, also accepted as an expert in criminal matters, including criminal sexual conduct upon a minor. Mr. Steingold testified that it is essential that clients understand the possibility of a conflict of interest and that in this case there appeared to be a real conflict. Mr. Steingold further testified that he did not believe that Mr. Hills' dual representation of Mr. and Mrs. Crittendon in this matter was inappropriate.

The panel finds that as to Count I, Respondent was guilty of misconduct by failing to obtain the informed consent of Mrs. Crittendon concerning the very real conflict of interest which existed between Mr. Crittendon and Mrs. Crittendon in the probate matter. Notwithstanding the fact that Mrs. Crittendon wanted to "stand by her man" and believed

in the innocence of her husband, considering the very serious potential of negative consequences concerning Mrs. Crittendon's parental rights, separate representation was necessary and appropriate. At a minimum, a full and complete disclosure, together with a written waiver of the conflict and consent to proceed, would have been appropriate. The Panel notes that Respondent's own expert witness, appears to have concurred in this view.

COUNT II - FRAUD

The Grievance Administrator alleges in Count II, that Respondent misrepresented his knowledge and experience in felony criminal conduct matters and this, engaged in misconduct. In support, the Grievance Administrator argued that although Respondent has had substantial trial experience, his experience in felony criminal matters is very limited. The Grievance Administrator also argued that Respondent asserted that he was the best attorney possible for the Crittendons and, therefore, gave an impression of knowledge and experience which he did not have.

Respondent testified that he did, in fact, have substantial experience in jury trials, both criminal and civil and that he properly and accurately represented his experience to the Crittendons. Respondent also testified that the Crittendons need was immediate and that he was prepared to provide the services that they required at the time that were required. Peggy and Lyndal Crittendon also both testified that they were unable to find another attorney at the time they required one.

The Panel finds that Respondent did not engage in misconduct concerning the nature and extent of his experience. Mr.Hill has had substantial experience in civil and criminal matters and, although, he may not have handled numerous criminal sexual conduct matters, he has handled at least one such matter in the recent past and therefore, did not mis-represent his knowledge and experience to the Crittendons.

COUNT III - EXCESSIVE FEE

The Grievance Administrator asserts that a $25,000.00 fee which, given Respondent's knowledge and experience in matters pertaining to

criminal sexual conduct, is an excessive fee. Again, in support, the Grievance Administrator asserts that such a fee could only be adequately charged by those in criminal defense field with the greatest knowledge and experience. Gail Benson testified that there are only a few attorneys in the Detroit Metropolitan Area who would be able to command such a fee in a similar matter. David Steingold testified that he has charged a similar fee on occasion, but those occasions have been relatively rare.

In support of his position, Respondent testified that the Crittendons required immediate help to the exclusion of other matters and that under all of the circumstances, a $25,000.00 is not excessive. This testimony was corroborated in large measure by the Crittendons who indicated they did not know any attorneys and needed immediate help.

The Panel finds that a $25,000.00 fee is not, per se excessive. The Panel is reluctant to substitute its Judgment for that of the marketplace. The excessiveness of the fee is primarily a function of the amount of work that is done. Respondent asserted numerous times in his testimony that he believed the $25,000.00 fee to be a non-refundable fee. Although a $25,000.00 fee is not, per se, excessive, it is the non-refundability of the fee which, in fact, makes the fee charged in this case excessive. The testimony was consistent that Respondent did not perform all of the services contemplated by the $25,000.00 fee and refused to refund any "unused" portion. The time sheet prepared by Respondent and submitted to the Crittendon's is not a credible indication of the time actually spent. The Panel believes it is the refusal to refund the unused portion of the fee which makes the fee, in total, excessive in violation of MRPC 1.5(a)(b).

COUNT IV - FAILING TO PLACE FEE IN TRUST ACCOUNT

The Grievance Administrator argues that Respondent's failure to place the entire $25,000.00 in his client trust account is a violation. Respondent argues that it was understood that the $25,000.00 was a non-refundable fee and, therefore, he had no obligation to place the money in his client trust account.

After hearing substantial testimony on this issue, including

testimony from Respondent, Lyndal Crittendon, Peggy Crittendon, as well as the deposition testimony of JoAnn Lau, the Panel finds that there was no written or oral agreement pertaining to the refundability or non-refundability of the $25,000.00 fee. There is a disagreement and conflicting testimony between that of Respondent and that of the Crittendons as to whether or not the $25,000.00 fee was non-refundable. Absent a clean understanding of the parties as to the non-refundability of the fee, the Panel finds that the $25,000.00 fee paid by the Crittendons was not non-refundable and, therefore, should have been placed in Respondent's client trust account. Accordingly, the Panel finds that Respondent is guilty of misconduct on this issue in violation of MRPC 1.4(a)(b), 1.15(a)(b)(c);1.16(d) and 8.4(a)-(c).

COUNT V - INTERVIEW OF A PARTY REPRESENTED BY COUNSEL

The Grievance Administrator has alleged that Respondent's interview of Brian Maksula, while Brian Maksula was represented by counsel constitutes misconduct. Respondent testified that at no time did he receive notice of an appearance on behalf of Brian Maksula and, therefore, his contact of Brian Maksula was appropriate. The testimony was controverted that, with the assistance of Peggy Crittendon, Respondent taped recorded an interview of Brian Maksula at Respondent's office.

The Panel finds that although Respondent did not receive a written notice of appearance of any attorney on behalf of Brian Maksula, that given the nature of the probate proceedings, he had received actual notice that Brian Maksula was represented by Counsel. In fact, the record is undisputed that Mr. Hill's associate appeared at a hearing in probate court wherein an attorney also appeared on behalf of Brian Maksula. Notwithstanding the absence of a written appearance, from that point forward Respondent should have known that any contact of Brian Maksula without the involvement or consent of counsel was inappropriate. Nevertheless, Respondent later engaged in an interview of Brian Maksula. Accordingly , the Panel finds that Respondent was guilty of misconduct on this issue in violation of MRPC 4.2, 4.4 and 8.4 (a)-(c).

FURTHER FINDINGS

The Panel shall schedule another hearing for the purpose of hearing testimony concerning the issue of discipline.

s\ John B. Lizza, Chairman
s\ Danielle F. Susser, Member
s\ Kenneth F. Silver, Member

1/6/97

APPENDIX B

STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD
DATE OF MAILING: April 14, 1998

*J. Michael Hill, 7340 Park Avenue, Allen Park, MI 48101-1903
Richard L. Cunningham, 243 W. Congress, Ste 256, Detroit, MI 48226
Leo W and Joann A Lau, 4304 Wooford Road, Del City, OK 73115
Lyndal & Peggy Crittendon, 12390 Willow St., Carleton, MI 48117

RE: J. Michael Hill, P 29769 Case No. 96-236-GA

The decision (Report/Order) of the hearing Panel in the above-captioned matter is enclosed. Please note the following important rules — Respondent should consult all applicable rules, MCR subchapter 9.100.

1) Effective Date of Panel Order. The discipline order of the Hearing Panel effective twenty-one (21) days after the date of mailing of this notice unless: a. the Panel order expressly provides for another date; OR b. a stay of discipline is obtained in accordance with MCR 9.115 (K)

2) Review by the Attorney Discipline Board. The Complaining Party, Respondent and Grievance Administrator may petition the Board for review of the Hearing Panel's decision within twenty-one (21) days from the date of mailing of this letter. (See MCR 9.118)

3) Stay of Discipline. With the timely filing by the respondent a petition for review and for a petition for a stay of the discipline (See MCR 9.115(K) as amended effective March 1, 1994 (See MCR 9.115 (K))

4) Costs. Payment of costs must be made within the time specified in the Order. Payments must be submitted to the Attorney Discipline Board. Checks or Money Orders should be made payable to: State Bar of

Michigan. Failure to reimburse the State Bar for the expense within the time prescribed will result in AUTOMATIC SUSPENSION. (See MAR. 9.128)

5) Notification to Clients, Conduct in Litigated Matters, Filing of Proof of Compliance, Conduct After Entry of Order Prior to Effective Date, and Compensation. (See MAR. 9.119 (A-F))

Very truly yours,

*Via Regular & Certified Mail

s\ John F. VanBolt
encl

cc: Tri-County Hearing Panel #3
John B. Lizza, Chairman
Danielle F. Susser, Member
Kenneth F. Silver, Member

APPENDIX B-1
STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

GRIEVANCE ADMINISTRATOR
State Of Michigan,

Petitioner,

v. ADB 96-236-GA

J.. MICHAEL HILL, P26769

Respondent.

_____/

RICHARD L CUNNINGHAM (P29735)
Attorney Grievance Commission
Attorney for Petitioner
Marquette Bldg., #256
243 West Congress
Detroit, Michigan 48226
(313) 961-6585

GUY C. VINING (P27892)
Berkley, Mengel & Vining, P.C.
Attorney for Respondent
3100 Penobscot Bldg.
Detroit, Michigan 48226
(313) 961-0220

_____/

REPORT OF TRI-COUNTY HEARING PANEL #3
ON DISCIPLINARY HEARING

On December 19, 1997, the Hearing Panel filed its report on charges contained in the Formal Complaint which report is incorporated herein by reference.

At the hearing convened on March 17, 1998, the Panel heard from the Grievance Administrator relative to his recommendations regarding discipline and the arguments supporting such recommendations. The Respondent submitted evident in mitigation on this matter together with Respondent's supporting arguments and his 24 Sanction Brief.

The Grievance Administrator introduced evidence of a prior admonition in May 1993 and a reprimand in September 1991. Respondent called three witnesses to testify to his good character and proficiency as an attorney.

At the conclusion of the hearing, the Panel found that the evidence showed no real mitigating factors but aggravating factors as follows:

a. Respondent was an attorney with substantial experience.
b. Respondent was subject to prior discipline on two separate occasions.
c. Respondent refused to acknowledge that he had done anything wrong on those prior occasions or in the instant case and believes that this Panel also made a mistake.
d. Respondent had been guilty of possibly dishonest and selfish motives.

The Grievance Administrator's presentation raised the question of the dispute relative to fees. The Administrator argued *Reynolds v. Polen*, 222 Mich App 20 to the effect that Respondent should lose his rights to any fees whatsoever. The Administrator further argued from the *Polen* case that:

> "The conduct of the attorney in this matter did not measure up to the standard required of an attorney towards his client. By such conduct, an attorney may lose his right to any fee."

Although the Panel found that the Respondent's representation fell below the standards required of an attorney of his experience, the Panel further found that it had insufficient evidence before it to decide the question of fees. It was the Panel's feeling that the complainant, Lyndal Crittendon did not get value for the fees that he paid. Since the Panel felt it could not

decide the question of fees, the Panel suggest that the matter of fees should be decided by fee arbitration between Crittendon and the Respondent. The Respondent indicated his willingness to arbitrate the question of fees. The Panel further felt that the "time records" submitted by the Respondent were not actual time records kept in the ordinary course of business but were a contrived attempt to justify the fees charged and received by the Respondent.

Based upon the Respondent's willingness to arbitrate the fee dispute, the Panel recommends that the Board require the Respondent to arbitrate the fee dispute with the Crittendons as an adjunct too this Order of Discipline.

Based upon all the evidence presented and our findings as reflected in our report together with the evidence presented at the hearing on March 17, 1998, we recommend that Respondent be suspended for a period of sixty (60) days.

ATTORNEY DISCIPLINE BOARD
Tri-County Hearing Panel #3

By: s\ John B. Lizza, Chairman

Dated: March 27, 1998

Prior Misconduct
Case No. 90-46-GA
Reprimand
Effective October 22, 1991

File No. 1225/91
Admonishment
Effective May 4, 1993

Statement of Costs

AGC:	$ 310.75
ADB:	$3,993.00
Total:	$4,303.75

hill\appeal 3

APPENDIX C

STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

GRIEVANCE ADMINISTRATOR,
Petitioner,

v Case No. 96-236-GA

J. MICHAEL HILL, P-26769,
Respondent.
_____/

ORDER OF SUSPENSION

Issued by Attorney Discipline Board
Tri-County Hearing Panel #3

This matter is before the panel upon the filing of Formal Complaint 96-236-GA charging that respondent, J. Michael Hill, has committed acts of professional misconduct warranting discipline. The panel has filed its report containing its findings and conclusions that the misconduct alleged in Counts One, Three, Four and Five of the Second Amended Formal Complaint has been established by a preponderance of the evidence, and the panel being otherwise advised;

NOW, THEREFORE,

IT IS ORDERED that Count Two of the Second Amended Formal Complaint is DISMISSED.

IT IS FURTHER ORDERED THAT RESPONDENT, J. Michael Hill, is SUSPENDED FROM THE PRACTICE OF LAW IN MICHIGAN FOR A PERIOD OF SIXTY (60) DAYS COMMENCING May 6, 1998 and until respondent complies with the requirements of MCR 9.123(A).

IT IS FURTHER ORDERED that from the effective date of this order and until reinstatement in accordance with the applicable provisions of MCR 9.123(A).

IT IS FURTHER ORDERED that from the effective date of this order and until reinstatement in accordance with the applicable provisions of MCR 9.123, respondent is forbidden from practicing law in any form; appearing as an attorney before any court, judge, justice, board, commission or other public authority; or holding himself out as an attorney by any means.

IT IS FURTHER ORDERED that respondent shall, within seven (7) days of the effective date of this order, notify all of his active clients, in writing, by registered or certified mail, return receipt requested, of the following:

1) the nature and duration of the discipline imposed;

2) the effective date of such discipline;

3) respondent's inability to act as an attorney after the effective date of such discipline;

4) the location and identity of the custodian of the clients' files and records which will be made available to them or to substitute counsel;

5) that the clients may wish to seek legal advice and counsel elsewhere; provided that if respondent is a member of a law firm, the firm may continue to represent each client with the client's express written consent.

6) the address to which all correspondence to respondent may be addressed.

IT IS FURTHER ORDERED that in accordance with MCR 9.119(B), respondent must, by the effective date of this order, in every

matter in which respondent is representing a client in litigation, file with the tribunal and all parties a notice of respondent's disqualification from the practice of law.

IT IS FURTHER ORDERED that respondent shall, within fourteen (14) days after the effective date of this order, file with the Grievance Administrator and the Attorney Discipline Board an affidavit of compliance as required by MCR 9.119(C).

IT IS FURTHER ORDERED that respondent's conduct after the entry of this order but prior to its effective date, shall be subject to the restrictions set forth in MCR 9.119(D); and respondent's compensation for legal services shall be subject to the restrictions described in MCR 9.119(F).

IT IS FURTHER ORDERED that respondent shall, within one (1) year from the effective date of this order, pay costs in the amount of $,303.75. Check or money order shall be made payable to the State Bar of Michigan, but submitted to the Attorney Discipline Board (719 Griswold Street, Suite 1910, Detroit, MI 48226) for proper crediting. Failure to reimburse the State Bar of Michigan within the time prescribed will result in respondent's automatic suspension from the practice of law in accordance with MCR 9.128.

ATTORNEY DISCIPLINE BOARD
Tri-County Hearing Panel #3

By: s\ John B. Lizza, Chairperson

Dated: April 14, 1998

jhill\appeal2

APPENDIX D

STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

Date of Mailing: October 29, 1998

*J. Michael Hill, 7340 Park Avenue, Allen Park, MI 48101-1903
Richard L. Cunningham, 243 W. Congress, Ste 256, Detroit, MI 48226
Leo W and Joann A Lau, 4304 Wooford Road, Del City, OK 73115
Lyndal & Peggy Crittendon, 12390 Willow St., Carleton, MI 48117

RE: J. Michael Hill, P 29769; 96-236-GA

DECISION OF THE ATTORNEY DISCIPLINE BOARD

The Order/Opinion of the Attorney Discipline Board in the above matter is enclosed.

It is the responsibility of each party to consult all applicable Court Rules governing disciplinary proceedings, subchapter 9.1000 of the Michigan Court Rules. PLEASE NOTE:

1) Effective Date of Board Order--A discipline order is effective TWENTY-ONE (21) days after mailing unless the Board finds good cause for the order to take effect earlier or a stay is obtained. MCR 9.118(D) and MCR 9.112(C).

2) Motion for Reconsideration--The Board MAY grant a stay pending its decision on a motion for reconsideration filed at any time before the Board's order takes effect. MCR 9.118(D). The filing of a petition for reconsideration does not automatically stay the attached order.

3) Appeals to the Supreme Court--A party may apply for leave to appeal to the Supreme Court with TWENTY-one (21) days after the Board's order is entered. MCR 9.122(A).

4) Stay of Discipline--If a suspension is 179 days or less a stay of the order will automatically issue on the timely filing by the respondent of an application for leave to appeal. The respondent may petition the Court for a stay pending appeal of other orders of the Board. MCR 9.122(C).

5) Notification to Clients and Tribunals--Attention is called to the applicable provisions of MCR 9.119(A-G).

Very truly yours,

s\ John F. Van Bolt

encl *Via Regular and Certified Mail
cc: Tri-County Hearing Panel #3
John B. Lizza, Chairman
Danielle F. Susser, Member
Kenneth F. Silver, Member

APPENDIX D-1

STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,

v Case No. 96-236-GA.

J. MICHAEL HILL, P 29760,
Respondent/Cross-Appellant.
_____/

ORDER INCREASING DISCIPLINE

Issued by the Attorney Discipline Board
719 Griswold Street, Suite 1910, Detroit, MI

Tri-County Hearing Panel #3 entered an order in this matter on April 14, 1998 suspending respondent's license to practice law in Michigan for sixty days. That order was stayed upon the filing of respondent's petition for review. Respondent seeks reversal of the hearing panel's findings and conclusions or, in the alternative, a reduction in the level of discipline to a reprimand. The Grievance Administrator has filed a separate petition for review which seeks a suspension of 180 days or more. The Administrator also seeks modification of the hearing panel's order to require respondent to refund all or part of the fees paid by the complainant, Lyndal Crittendon, or, in the alternative, to require respondent to submit to arbitration on the fee issue.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118 which included review of the substantial record below and consideration of the further briefs and arguments presented by the parties.

NOW, THEREFORE,

IT IS ORDERED that the findings and conclusions on the charges of misconduct as set forth in the hearing panel's report filed January 5, 1998 are AFFIRMED for the reason that those findings have proper evidentiary support in the whole record. See In re Del Rio. 407 Mich 336 (1979); Grievance Administrator v. August, 438 Mich 296 (1991). In reviewing the panel's findings and conclusions on the charges of misconduct, the Board has considered the applicable "questions" enumerate in respondent's brief in support of petition for review. We conclude that the hearing panel committed no reversible error with regard to its factual findings, its procedural rulings or its application of the appropriate substantive legal or ethical standards.

IT IS FURTHER ORDERED that the hearing panel order of discipline entered April 14, 1998 is MODIFIED BY INCREASING DISCIPLINE TO A SUSPENSION OF 180 DAYS COMMENCING Nov 20 1998 and until respondent's reinstatement by a hearing panel, the Board or the Supreme Court in accordance with MCR 9.123(B) and MCR 9.124.

While the Board reviews a panel's findings with regard to the evidentiary support in the record, the Court has recognized the Board's greater measure of discretion with regard to its ultimate conclusion. Grievance Administrator v August, supra. The established misconduct in this case includes respondent's simultaneous representation of a client/husband charged with criminal sexual conduct and the client/wife in connection with an action to terminate parental rights, without seeking or obtaining the informed consent of the clients in violation of MRPC 1.7(a) and (b) and 8.4 (a), (b) and (c); respondent's refusal to refund the unused portion of the $25,000 fee paid by the clients in violation of MRPC 1.5(a) and (b); respondent's failure to place an unearned retainer fee, not properly designated as a non-refundable retainer, in a segregated trust account in violation of MRPC 1.4(a) and (b); 1.15(a), (b) and (c); 1.16(d) and 8.4(a), (b) and (c); and respondent's interview of a party who he knew

or should have known was represented by counsel without that counsel's knowledge or consent, in violation of MRPC 4.2, 4.4 and 8.4(a), (b) and (c). The panel found that no substantial mitigation was offered but that respondent's conduct was aggravated by his substantial experience in the practice of law; his prior disciplinary history including a reprimand effective October 22, 1991 and an admonishment effective May 4, 1993; his refusal to acknowledge the impropriety of his conduct and the presence of motives described by the panel as "possibly dishonest and selfish." Taking all of these factors into account together with the nature of the misconduct and the potential for harm to the clients, we adopt the argument advances by the Grievance Administrator that respondent should be suspended for a sufficient period of time to trigger the reinstatement requirement of MCR 9.123(B). We conclude that the goal of protecting the public will be best achieved by conditioning respondent's resumption of the practice of law upon his establishment of the criteria set forth in MCR 9.123(b) (1)-(7).

With regard to the value of the services performed by respondent and the amount of the unearned fees retained by respondent, the hearing panel relied, in large part, upon respondent's expressed willingness to arbitrate his fee dispute with complainant Crittendon. We agree that arbitration of this dispute would be appropriate. We specifically direct that the hearing panel assigned to rule upon respondent's eligibility for reinstatement should take into account respondent's affirmative actions to resolve this fee dispute, by arbitration or other means, in its determination of whether or not respondent has demonstrated a proper understanding of and attitude toward the standards that are imposed on members of the bar and whether or not respondent can safely be recommended to the public, the courts and the legal profession as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice.

IT IS FURTHER ORDERED that respondent shall, on or before September 1, 1999 pay costs in the amount of $4303.75. This amount represents the sum of $4138.41 assessed by the panel and $165.09 which

represents the cost of the transcript in this review proceeding. Check or money order shall be made payable to the State Bar of Michigan, but submitted to the Attorney Discipline Board (719 Griswold Street, Suite 1910, Detroit, MI 48226) for proper crediting.

ATTORNEY DISCIPLINE BOARD

By: s\ Albert L. Holtz, Chairperson

Board Members Elizabeth N. Baker, C. H. Dudley, Barbara B. Gattorn, Grant J. Gruel, Albert L. Holtz, Roger E. Winkelman and Nancy A. Wonch concur in this decision

Board Member Michael R. Kramer would increase discipline to a suspension of ninety days.

Board Vice-chairperson Kenneth L. Lewis did not participate.

hillappeal

APPENDIX E

ORDER

Michigan Supreme Court
Lansing, Michigan

Entered: November 19, 1998

Conrad L. Mallet, Jr.
Chief Justice

113482 & (3) (4)

James H. Brickley
Michael F. Cavanagh
Patricia J. Boyle
Elizabeth A. Weave
Marilyn Kelly
Clifford W. Taylor
Justices

GRIEVANCE ADMINISTRATOR,
Petitioner - Appellee,

v.

J. MICHAEL HILL,
Respondent - Appellant.

SC: 113482
ADB: 96-236-GA

On order of the Court, the motion for immediate consideration, the motion for stay of enforcement of ADB order, and the application for leave to appeal are considered. The motion for immediate consideration is GRANTED. The motion for stay is GRANTED pending further order of this Court. The application for leave to appeal remains under consideration.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 19, 1998

Corbin R. Davis

APPENDIX F

ORDER

Entered: March 9, 1998

Michigan Supreme Court
Lansing, Michigan

Elizabeth A. Weaver,
Chief Justice

113482

James H. Brickley
Michael F. Cavanagh
Marilyn Kelly
Clifford W. Taylor
Maura D. Corrigan
Robert P. Young, Jr.
Justices

GRIEVANCE ADMINISTRATOR,
Petitioner - Appellee,

v.

J. MICHAEL HILL,
Respondent -Appellant.

SC: 113481
ADB: 96-236-GA

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because, we are not persuaded that the questions presented should be reviewed by this Court. The stay previously granted by this Court on November 19, 1998, shall remain in effect until 21 days after the date of this Order.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 9, 1999

Corbin R. Davis

APPENDIX G

Taken from Transcript dated 9/23/97

Commission?

A From Gail Benson.

Q She told you all that when you met with her ahead of time?

A No, she didn't say nothing about this until afterwards, after we had had the initial consultation and I'd asked her what should I do about all this, and then --well, it was really during the initial conversation at the end of it, let's put it that way. Because she told me to call for a time line, because I didn't know how to fire an attorney, and call for an accounting of this time, and ask for a substantial amount — how'd she say it - substantial amount back.

Q And did you express to Mr. Hill that you thought, you believed that you were entitled to a substantial amount back?

A Yes, I did.

Q And how did he respond to that?

A Well, there were several statements said. He told me at that time he told me that he had said that it was non-refundable, and that's when I told him I'd call my parents and find out for a fact that he'd stated that. He was upset. He was — I don't know, I don't know how to explain it. I mean I can understand

APPENDIX H

Taken from Transcript of 9/4/97

Page 64

Q Did there come a time when you had further discussion?
A Yes.
Q And did you given Mr. Crittendon, then, additional advice?
A I don't now if I reminded him of his - - if I told him of his option to grieve Mr. Hill or if he already was doing that and I discussed the process with him.
Q Was it ever brought to your attention that Mr. Hill had provided him with a written time sheet, if you will, or a written itemization of the fee or costs?
A They brought that to me.
Q And did you review and examine what you saw?
A Yes, I did.
Q And what, if anything did you advise him to do after you reviewed that — advise Mr. Crittendon to do after you reviewed it?
A Again, I don't recall if he had already started the grievance process and was filing out the application, but I certainly suggested he should call that to the attention of the Attorney Grievance Commission.
Q And why did you take such action?
A It was outrageous.
Q Why is that?
A I never seen a billing like that from anybody anytime

APPENDIX I

Taken from Transcript dated 9/4/97

Page 83

money for the payment of your outstanding balance?

A They have said to me repeatedly that if they got money back, this money was borrowed from –

Q Well, my question was not who they borrowed it from or where they got it, but my question is whether you have an agreement with the Crittendons that if restitution is received by them, that that money is to be earmarked for payment of your outstanding balance?

A Do I have an agreement? No, I do not have an agreement. I do believe that's his intention, but I don't have any agreement and I haven't requested that.

Q You've had that type of Conversation with Mr. Crittendon?

A He has said repeatedly if he gets money back, if he gets money, he would pay me. But it's not an agreement It's his way of — he feels bad because he hasn't paid me. I have not asked him to do that.

Q You feel badly about this case, also, don't you?

A In what way?

Q That you had indicated that you now know after the fact that Mr. Crittendon had been falsely accused?

A No, that's not correct.

Q I misunderstood your earlier testimony that .... you didn't testify that you felt sorry for them because you

APPENDIX J

Taken from Transcript dated May 21, 1997

criminal defense trial lawyers. I've been on a Criminal Jurisprudence Committee, the Criminal Law Section Counsel for the State Bar, Constitutional Law Committee for the State Bar, and Judicial Selection Committee for the State Bar, representative assembly for the State Bar.

I'm a Wayne County Mediator and an Oakland County Mediator, Attorney Discipline Board panelist.

Q Now, it sounds as the bulk of your practice has been in the area of criminal law; is that a fair statement.

A That's correct.

Q All right, and have you had occasion to deal with, in the course of criminal proceeding to deal with juveniles as witnesses?

A As witnesses?

Q As witnesses?

A Yes.

Q And have you ever had occasion to deal with cases involving juveniles as victims?

A Yes.

Q And representing then adults were the --

A I represented both, my practice is not predominantly in juvenile court but I represent

APPENDIX K

Taken from Attorney Hill's Motion for Re-Consideration Page 9

483 NW2d 629 (1992); 195 Mich App 523, 532-533.

Certainly by offering no evidence at all, by failing to present affidavits and in fact willfully refusing to and for that matter, failing to even make a cogent, unsworn, written argument the Grievance Administrator has failed, pursuant to Winklepleck to meet it's burden of showing that a genuine issue of material fact exists.

Also, pursuant to Woll vs. Attorney General, 409 Mich 500, (180), 297 NW2d 578, 592, please also see Grayned vs. Rockford, 408 U. S. 104, 108-109 S.Ct. 2294, 33 L.Ed. 222(1972) Count I should be dismissed due to vagueness.

Woll vs. Attorney General, 409 Mich 500, 533 (1980) states:

> A statute may be challenged for vagueness on the grounds that it
> - is overbroad, impinging on First Amendment freedoms, or
> - does not provided fair notice of the conduct proscribed, or
> - is so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine whether an offense has been committed.

Wool vs. Kelley, 297 NW2d 578 (1980) which concerned three attorneys who were charged with solicitation of cases involved in part the fact that Woll was claiming that the statute did not apply to workman's compensation cases. Woll's argument had a great deal of merit since workman's compensation was not mentioned specifically in the statute and according to Woll other statutes exclusively and exhaustively covered the workman's compensation situation. However the Supreme Court of Michigan ruled:

APPENDIX L

State of Michigan
Attorney Discipline Board

Grievance Administrator,
Petitoner,

v. Case No. 96-236-GA

J. Michael Hill, P-29769,
Respondent.
_____/

ORDER REGARDING RESPONDENT'S MOTIONS FOR SUMMARY DISPOSITION, RECONSIDERATION AND MORE DEFINITE STATEMENT

Considered by Attorney Discipline Board
719 Griswold St., Suite 1910, Detroit, MI

The hearing panel, having issued an order on December 11, 1996 denying respondent's motion for summary disposition as to Counts 1 and 3 and taking the motion under advisement as to Court 2; and the panel having considered the respondent's motion for reconsideration of that order and the respondent's further motion for more definite statement; and the panel having considered the Grievance Administrator's responses to those motions; and the panel having considered the argument presented by counsel at a hearing on March 18, 1997 and the panel being otherwise fully advised;

NOW THEREFORE,

IT IS ORDERED that the respondent's motion for summary disposition as to Count 2 of the formal complaint is DENIED.

IT IS FURTHER ORDERED that respondent's motion for reconsideration of the panel's order of December 11, 1996 is DENIED.

IT IS FURTHER ORDERED that respondent's motion for more definite statement is DENIED.

IT IS FURTHER ORDERED that, in accordance with the

representation by the Administrator's counsel, the Grievance Administrator may file an amended complaint to be filed on or before March 31, 1997. Respondent shall file an answer to the amended complaint within twenty one days after service of the amended complaint. [See MCR 9.115(c)].

IT IS FURTHER ORDERED that the exchange of witness lists and the inspection of documents to be introduced shall be governed by the provisions of MCR 9.115(F)(4).

IT IS FURTHER ORDERED that the assignment clerk of the Attorney Discipline Board is directed to reschedule this matter for a hearing pursuant to MCR 9.115.

ATTORNEY DISCIPLINE BOARD
Tri County Hearing Panel #3

By: s\ John B. Lizza, Chairman

Dated: March 24, 1997

APPENDIX M

Taken from Attorney Hill's Brief in Support of Appeal Page 14

Under Woll vs. Attorney General, if this court should find that MRPC 1.7, without specifically stating it, requires that an explanation of a conflict must be in writing should that be given prospective effect thus only apply to attorneys who have had the opportunity to read this honorable court's decision. The panel found that at the very least Attorney Hill should have had a waiver of conflict in writing. This, of course, is not required under MRPC 1.7. Given the fact that no court or the Attorney Discipline Board has ever issued an opinion saying that a waiver of conflict must be in writing and that there is no disciplinary rule, court rule or statute to that effect it would appear that if this court would determine that MRPC 1.7 does require a written waiver, that under Woll vs. Attorney General that it would not be appropriate to discipline Attorney Hill with that decision.

28. IF THIS COURT SHOULD DETERMINE THAT ALL FEE AGREEMENTS HAVE TO BE IN WRITING DESPITE THE FACT THAT THE CODE OF PROFESSIONAL CONDUCT DOES NOT SPECIFICALLY REQUIRE THAT AND THAT THE SUPREME COURT HAS NOW TWICE REFUSED TO GRANT MR. THOMAS' REQUEST THAT ALL FEE AGREEMENTS HAVE TO BE IN WRITING, SHOULD THIS BE GIVEN PROSPECTIVE EFFECT ONLY?

The panel and the Attorney Discipline Board have through their somewhat veiled language have made it clear that they believe fee agreements should be in writing, as recommended by the State Bar Ethics Opinion, particularly in regard to non-refundable flat fee agreements. Of course, this is not required in the Code of Professional Conduct nor by any court opinion, court rule or statute. What the Code of Professional Conduct does require is that all contingency agreements have to be in writing and that an attorney cannot enter into a contingency fee agreement in domestic relations cases or criminal cases

29. UNDER WOLL VS. ATTORNEY GENERAL IF THIS COURT IS GOING TO RULE THAT NON-REFUNDABLE FEE AGREEMENTS ARE UNETHICAL DESPITE THE FACT THAT NOTHING IN THE CODE STATES THAT SHALL IT HAVE PERSPECTIVE EFFECT ONLY?

deposited therein except as provided in this rule." Rule 1.15 goes on to state under (b) "Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person."

Why on earth would the Supreme Court require attorneys to notify a client or a third person about attorney fees that the client has just paid him. Obviously, the authors of Rule 1.15 did not intend for it to apply to attorney fees that a client had just paid to someone. Moreover, the Supreme Court makes it manifestly clear that no funds belonging to the lawyer or the law firm shall be deposited therein (in the trust account) except as provided in this rule.

It is clear that the Panel is attempting to read something into the Michigan Rules of Professional Conduct 1.15 that is simply not written there. This is in violation of the United States Constitution's prohibition against vagueness and over reaching as enunciated in Grayned vs. City of Rockford, 408 US 104, 109-110, 33 LEd2d 222, 92 S.Ct. 2294, 2299 (1972). (Please see Exhibit 19 attached hereto).

10. WAS IT AGREED THAT THE ATTORNEY FEE WAS NON-REFUNDABLE?

A receipt was presented stating that a $1,500.00 fee that was being paid was a non-refundable engagement fee. There was another statement on the receipt that all attorney fees were non-refundable. The Crittendons assert that this receipt only applied to the probate case and did not apply to the criminal case. Apparently the panel agreed with the Crittendons or simply chose to ignore the evidence. The Attorney Discipline Board chose not to comment.

11. DID J. MICHAEL HILL BELIEVE THAT THE ATTORNEY FEE THAT HAD BEEN PAID WAS NON-REFUNDABLE?

The Grievance Administrator has argued that a flat fee is not a non-refundable fee absent a written agreement to that effect pursuant to a state bar opinion. The panel found that the

APPENDIX O

Taken from Transcript dated 10/22/97.

Page 19

By Mr. Vining:

Q Thank you.

You indicate that you have formulated some opinions with respect to the ethical violations of simultaneous representation?

A In this particular case, yes, I have.

Q And would you tell us, in a general sense, what those opinions are in this particular case?

A I do not feel that there was a violation.

Q And can you tell us why you've reached that conclusion, Mr. Steingold?

A As a criminal law practitioner who is often faced with the prospect of defending more than one person, either charged with a crime, or in this type of situation where there's concurrent matters in both criminal court and in juvenile court, you face this all the time. There is no requirement that you have it in writing. It's preferred. We all know that it's preferred. In a case like this it's strongly preferred.

But what I base my opinion on is basically my discussions with Mr. Hill, as well as what I saw of the testimony of Mrs. Crittendon. What is essential is that there be full disclosure. What is essential is that the clients understand that even if there isn't a real conflict, there is a potential conflict. In this

APPENDIX P

MICHIGAN CONSTITUTION

Article 6, Section 28

All final decisions, finding, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

APPENDIX Q

MICHIGAN RULES OF PROFESSIONAL CONDUCT
Adopted by order of the Michigan Supreme Court, October 1, 1988

Rule 1.15 Safekeeping Property.

(a) A lawyer shall hold property of clients or third persons that is in a lawyers possession in connection with a representation separate from the lawyers own property. All funds of the client paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in an interest bearing account in one or more identifiable banks, savings and loan associations, or credit unions maintained in that state in which the law office is situated, and no funds belonging to the lawyer or law firm shall be deposited therein except as provided in this rule. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there it an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

Rule 1.5 Fees.

(a) A lawyer shall not enter into an agreement for, charge, or

collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involve and the results obtained;

(5) the time limitations imposed by the client or the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services, and;

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

Rule 4.2 Communication with a Person Represented by Counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a party whom the lawyer knows to be represented in the matter of another lawyer, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.